

S/N 10/529120

In reply to the Office Action dated January 19, 2010

**REMARKS**

Favorable reconsideration of this application is requested in view of the above amendments and the following remarks.

Claims 1, 5 and 17 have been amended and are supported in the specification at, for example, FIG. 5A. Claim 18 has been amended and is supported in the specification at, for example, page 16, line 25 to page 17, line 1. Claims 19-23 have been added. Claims 19-22 are similar to claims 5-8. Claim 23 is supported in the specification at, for example, page 13, lines 12-24 and FIGs. 5A and 6. No new matter is added.

**35 USC § 103 Rejections**

Claims 1-10 and 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over McNeely (US 6,615,856) in view of Kellogg et al. (US 6,632,399). Applicants respectfully traverse this rejection.

Claim 1 is directed to an analytical tool having a liquid introduction port and at least one flow path. A separation film is disposed below the liquid introduction port and above the said at least one flow path. A branching flow path branches from said at least one flow path and communicates with a first gas discharge port closed by a first seal film that is openable by needle insertion for supplying the sample liquid from the liquid introduction port to the branching position and the reaction chamber communicates with a second gas discharge port closed by a second seal film that is openable by needle insertion for supplying the sample liquid beyond the branching position to the reaction chamber.

In the rejection, the air duct 28 of McNeely is equated to the claimed first seal film and the air duct 30 is equated with the claimed second seal film. However, these elements 28, 30 are air ducts, and not seal films, as described at column 5, line 66 to column 6, line 28. A sealing function as well as an opening function is provided by external valves 53, 54, 55 and these valves can be regarded as seal members since they perform a sealing function. However, even if considered as seal members, the valves 53, 54, 55 still do not correspond to the claimed seal film that is openable by needle insertion.

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The rejection contends that the limitation "openable by needle insertion" has no patentable weight. Applicants respectfully disagree; this term clearly defines structural and property aspects of the product. Moreover, the limitation "seal film" is itself a structural limitation which is clearly distinguishable from a non-film element such as a valve or air duct. Therefore, the rejection of claim 1 is improper.

And, as noted in the rejection at page 3, McNeely also fails to teach or suggest the claimed separation film that is disposed below the liquid introduction port and above the flow path.

Kellogg fails to teach or suggest the claimed first seal film and second seal film. The rejection equates the cell separation chamber 607 of Kellogg with the claimed separation film. However, the filtering function in Kellogg actually is provided by a filter 606, which is a bulk porous material surrounding the depression 613 inside the cell separation chamber 607 (col. 24, lines 53-59). It is improper to regard such a bulk body as a film.

Further, it should be noted that the positional relationship between various elements in Figures 8A-8E is shown upside down. This is clear from the description, "As depression 613 fills, serum is both wicked and driven by rotation-induced pressure through the filter 606 to the upper surface of cell separation chamber 607, leaving red blood cells and other cellular components trapped beneath filter 606 in depression 613" (col. 24, lines 61-65). Therefore, Kellogg fails to meet the claimed limitation of a separation film disposed below the liquid introduction port and above said at least one flow path.

It is apparent that neither McNeely nor Kellogg teach or suggest the claimed seal film or the claimed separation film that is disposed below the liquid introduction port and above the flow path. Therefore, even if combined, the references would not produce the features of claim 1 and the rejection should be withdrawn.

Claims 2-10 and 14-16 are allowable at least by virtue of their dependence on independent claim 1 or intervening dependent claims. The rejections of these claims should be withdrawn. Applicants do not concede the correctness of the rejections.

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Claim 17 is directed to an analytical tool having a liquid introduction port and at least one flow path. A separation film is disposed below the liquid introduction port and above the said at least one flow path.

As pointed out above, neither McNeely nor Kellogg teach or suggest the claimed separation film that is disposed below the liquid introduction port and above the flow path. Therefore, even if combined, the references would not produce the features of claim 17 and the rejection should be withdrawn.

Claim 18 is directed to an analytical apparatus comprising an analytical tool and a hole-making mechanism. The analytical tool has a hole-making mechanism having a first hole-making needle for perforating the first seal film, and a second hole-making needle for perforating the second seal film.

Neither McNeely nor Kellogg teach or suggest the claimed the first or second hole-making needles. Therefore, even if combined, the references would not produce the features of claim 18 and the rejection should be withdrawn.

#### New Claims

New dependent claims 19-23 provide additional distinguishing features over McNeely and Kellogg. Claims 19-23 are allowable, if for no other reason, then at least by virtue of their dependence on independent claim 17. Therefore, these new claims should be allowed.

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Applicants respectfully request that a timely Notice of Allowance be issued in this case.


If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.



Dated: June 21, 2010

Respectfully submitted,

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